

AMENDED IN ASSEMBLY SEPTEMBER 3, 2003

AMENDED IN ASSEMBLY AUGUST 26, 2003

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JUNE 18, 2003

AMENDED IN SENATE MAY 20, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 1008

Introduced by Senator Machado

February 21, 2003

An act to amend Sections ~~999~~, 999.2, 999.5, 999.7, and 999.9 of the Military and Veterans Code, and to add Section 10115.9 to the Public Contract Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1008, as amended, Machado. Veterans: contracts: disabled veteran business enterprises.

Under existing law, any state governmental entity that awards contracts for professional bond services and for construction and certain related purposes has annual statewide participation goals of not less than 3% for disabled veteran business enterprises, as defined. For purposes of these provisions, existing law defines a "disabled veteran" as a veteran, as specified, with a service-connected disability who is a resident of the state.

This bill would ~~modify the definition of disabled veteran business enterprise, and~~ specify that a limited liability company may be certified as a disabled veteran business enterprise for these purposes if that

company is wholly owned by one or more disabled veterans. ~~The bill would also change the definition of “disabled veteran” to instead mean a veteran, as specified, with a service-connected disability of at least 10% who is a resident of, and is domiciled in, the state.~~

This bill would deem any disabled veteran business enterprise that rents equipment to an awarding department to be an equipment broker, as defined, ~~unless the equipment is owned solely by one or more disabled veterans, who submit evidence one or more certified disabled veterans have 51% ownership of the equipment and evidence is submitted~~ in support of that fact. The bill would also prohibit state funds expended for equipment rented from equipment brokers, as specified, from being credited toward the 3% goal.

This bill would require a disabled veteran business enterprise that is a broker, as defined, and that obtains a contract under these provisions to make certain disclosures to the awarding department.

The bill would also require a disabled veteran business enterprise and its owners to submit copies of the enterprise’s federal income tax returns, as specified, or be subject to certain penalties for noncompliance.

Existing law requires the administering agency and the awarding department to establish methods of monitoring adherence to the participation goals.

This bill would additionally prohibit an awarding department from relying on the administering agency’s certification of a disabled veteran business enterprise if that department knows that the disabled veteran business enterprise does not maintain the certification requirements. The bill would also prohibit state funds expended on a contract with a disabled veteran business enterprise that does not meet and maintain the certification requirements from being credited toward the 3% goal.

Existing law imposes a civil penalty with respect to, among other things, fraudulently obtaining certification as a disabled veteran business enterprise.

This bill would provide, among other things, that it is unlawful to knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract. It would make it unlawful to establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have violated the foregoing prohibitions. It would also make it unlawful to willfully and knowingly make or prepare any statement or document that is fraudulent or false as to any



material matter. The bill would, in addition to civil penalties, make it a misdemeanor to violate all of the foregoing prohibitions, thereby imposing a state-mandated local program.

The bill would also require a defendant to pay all of the plaintiff's costs and attorneys' fees in a civil action brought for violations of these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 999 of the Military and Veterans Code~~
2 ~~is amended to read:~~
3 ~~999. As used in this article, the following definitions apply:~~
4 ~~(a) "Administering agency" means the Treasurer in the case of~~
5 ~~contracts for professional bond services, and the Department of~~
6 ~~General Services, in the case of contracts governed by Section~~
7 ~~999.2.~~
8 ~~(b) "Awarding department" means any state agency,~~
9 ~~department, governmental entity, or other officer or entity~~
10 ~~empowered by law to issue bonds or enter into contracts on behalf~~
11 ~~of the State of California.~~
12 ~~(c) "Bonds" means bonds, notes, warrants, certificates of~~
13 ~~participation, and other evidences of indebtedness issued by or on~~
14 ~~behalf of the State of California.~~
15 ~~(d) "Broker" or "agent" means any individual or entity or any~~
16 ~~combination thereof that does not have title, possession, control,~~
17 ~~and risk of loss of materials, supplies, services, or equipment~~
18 ~~provided to an awarding department, unless the materials,~~
19 ~~supplies, services, or equipment are owned solely by one or more~~
20 ~~disabled veterans.~~
21 ~~(e) "Contract" includes any agreement or joint agreement to~~
22 ~~provide professional bond services to the State of California or an~~
23 ~~awarding department. "Contract" also includes any agreement or~~

1 joint development agreement to provide labor, services, material,
2 supplies, or equipment in the performance of a contract, franchise,
3 concession, or lease granted, let, or awarded for and on behalf of
4 the State of California.

5 (f) “Contractor” means any person or persons, regardless of
6 race, color, creed, national origin, ancestry, sex, marital status,
7 disability, religious or political affiliation, or age, or any sole
8 proprietorship, firm, partnership, limited liability company, joint
9 venture, corporation, or combination thereof who submits a bid or
10 enters into a contract with a representative of a state agency,
11 department, governmental entity, or other officer empowered by
12 law to enter into contracts on behalf of the State of California.
13 “Contractor” includes any provider of professional bond services
14 who enters into a contract with an awarding department.

15 (g) “Disabled veteran” means a veteran of the military, naval,
16 or air service of the United States, including, but not limited to, the
17 Philippine Commonwealth Army, the Regular Scouts (“Old
18 Scouts”), and the Special Philippine Scouts (“New Scouts”), with
19 a service-connected disability of at least 10 percent who is a
20 resident of, and domiciled in, the State of California.

21 (h) (1) “Disabled veteran business enterprise” means a
22 business concern certified by the administering agency as meeting
23 and maintaining all of the following requirements:

24 (A) It is one of the following:

25 (i) A sole proprietorship at least 51 percent owned by one or
26 more disabled veterans.

27 (ii) A publicly or privately owned corporation for which at least
28 51 percent of the voting stock and at least 51 percent of the value
29 of all stock is owned by one or more disabled veterans.

30 (iii) A subsidiary corporation that is wholly owned by a parent
31 corporation described in clause (ii).

32 (iv) A partnership or joint venture for which at least 51 percent
33 of the ownership, voting rights, assets, income, and expense is held
34 and owned by one or more disabled veterans.

35 (v) A limited liability company that is wholly owned by one or
36 more disabled veterans.

37 (B) The management and control of the daily business
38 operations is performed by one or more disabled veterans. The
39 disabled veterans who exercise management and control are not

~~required to be the same disabled veterans as the owners of the business concern.~~

~~(C) The business concern is not an equipment broker.~~

~~(2) Notwithstanding paragraph (1), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business concern that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, and solely for purposes of any contract entered into before that death or certification, that business concern shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business concern is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.~~

~~(i) “Equipment” means construction equipment, excavators, motor graders, backhoes, bulldozers, transports, pilot cars, potable water trucks and trailers, nonpotable water trucks and trailers, gray water trucks and trailers, fire engines, fuel trucks, refrigerator trucks and trailers, dry storage trailers, forklifts, mobile kitchens and support units, tents, portable toilets, dumpsters, office trailers, photocopy trailers, clerical trailers, computers and facsimile machines, telephones, generators, light towers, buses, service vehicles, special vehicles, ambulances, chainsaws, base camp equipment, shower units, portable wash stations, mobile laundry units, aircraft, aircraft support vehicles and trailers, and all specialized firefighting equipment.~~

~~(j) “Equipment broker” means any broker or agent who rents equipment to an awarding department.~~

~~(k) “Foreign corporation,” “foreign firm,” and “foreign-based business” means a business entity that is incorporated or has its principal headquarters located outside the United States of America.~~

~~(l) “Goal” means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.~~

~~(m) “Management and control” means effective and demonstrable management of the daily operations of the business entity.~~

(n) ~~“Professional bond services” include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter’s counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.~~

~~SEC. 2.—~~

SECTION 1. Section 999.2 of the Military and Veterans Code is ~~amend-~~ amended to read:

999.2. (a) Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity, including school districts when they are expending state funds for construction, professional services (except those subject to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code), materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 3 percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding department.

(b) *For purposes of this section:*

(1) *“Broker” or “agent” means any individual or entity, or any combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more certified disabled veterans has 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.*

(2) *“Equipment” means any piece of equipment that is used or provided for rental to any state agency, department, officer, or other state governmental entity, including equipment for which operators are provided.*

(3) *“Equipment broker” means any broker or agent who rents equipment to an awarding department.*

(c) A disabled veteran business enterprise that rents equipment to an awarding department shall be deemed to be an equipment broker unless ~~the equipment is owned solely by one or more disabled veterans.~~ *one or more disabled veterans has 51 percent ownership of the quantity and the value of each piece of equipment.* If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any

contract, submit to the awarding department a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing the name, address, telephone number, and tax identification number of the disabled veteran owner. Each disabled veteran owner shall submit his or her ~~state and~~ federal income tax returns to the administering agency pursuant to subdivision (f) as if he or she were a disabled veteran business enterprise. The disabled veteran business enterprise of a disabled veteran owner who fails to submit his or her tax returns will be deemed to be an equipment broker.

~~(e)–~~

(d) A disabled veteran business enterprise that rents equipment to an awarding department shall, prior to performing the contract, submit to the awarding department a declaration signed by each disabled veteran owner and manager of the enterprise stating that the enterprise obtained the contract by representing that the enterprise was a disabled veteran business enterprise meeting and maintaining all of the requirements of a disabled veteran business enterprise. The declaration shall include the name, address, telephone number, and tax identification number of the owner of each piece of equipment identified in the contract.

~~(d)–~~

(e) State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the 3-percent goal.

~~(e)–~~

(f) A disabled veteran business enterprise that is a broker or agent and that obtains a contract pursuant to subdivision (a) shall, prior to performing the contract, disclose to the awarding department that the business is a broker or agent. The disclosure shall be made in a declaration signed and executed by each disabled veteran owner and manager of the enterprise, declaring that the enterprise is a broker or agent, and identifying the name, address, and telephone number of the principal for whom the enterprise is acting as a broker or agent.

~~(f)–~~

(g) (1) A disabled veteran business enterprise, and each owner thereof, shall, at the time of certification, submit to the administering agency complete copies of the enterprise's federal income tax returns for the three previous tax years.

1 (2) A disabled veteran business enterprise, and each owner
2 thereof, shall submit to the administering agency complete copies
3 of the enterprise's federal income tax returns that have a
4 postcertification due date, on or before the due date, including
5 extensions.

6 (3) A disabled veteran business enterprise that, and each owner
7 thereof who, has not submitted to the administering agency
8 complete copies of the enterprise's federal income tax returns for
9 the three tax years preceding certification nor for each
10 postcertification tax year for which a return was required to be
11 filed, shall have 90 days to submit those returns.

12 (4) A disabled veteran business enterprise that fails to comply
13 with any provision of this subdivision shall be prohibited from
14 participating in any state contract until the disabled veteran
15 business enterprise complies with the provisions of this
16 subdivision. Funds expended involving a disabled veteran
17 business enterprise during any period in which that enterprise is
18 not in compliance with the provisions of this subdivision shall not
19 be credited toward the awarding department's 3 percent goal.

20 ~~(g)~~—

21 (h) A disabled veteran business enterprise that fails to maintain
22 the certification requirements set forth in this article shall
23 immediately notify the awarding department and the
24 administering agency of that failure by filing a notice of failure
25 that states with particularity each requirement the disabled veteran
26 business enterprise has failed to maintain.

27 ~~SEC. 3.—~~

28 *SEC. 2.* Section 999.5 of the Military and Veterans Code is
29 amended to read:

30 999.5. (a) The administering agency shall establish a method
31 of monitoring adherence to the goal specified in Section 999.1,
32 including requiring a followup report from all contractors upon the
33 completion of any sale of bonds.

34 (b) The awarding department shall establish a method of
35 monitoring adherence to the goals specified in Section 999.2.

36 (c) An awarding department shall not credit toward the
37 department's 3 percent goal state funds expended on a contract
38 with a disabled veteran business enterprise that does not meet and
39 maintain the certification requirements.

(d) The administering agency shall adopt rules and regulations, including standards for good faith efforts, for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted.

~~SEC. 4.—~~

SEC. 3. Section 999.7 of the Military and Veterans Code is amended to read:

999.7. (a) (1) On January 1 of each year, each awarding department shall report to the Governor, the Legislature, the Department of General Services, and the Department of Veterans Affairs on the level of participation by disabled veteran business enterprises in contracts identified in this article for the previous fiscal year.

(2) If the awarding department has not met the established goals for that year, the awarding department shall report to the Legislature, the Department of General Services, and the Department of Veterans Affairs the reasons for the awarding department's inability to achieve the goals and shall identify steps it shall take in an effort to achieve the goals.

(b) On April 1 of each year, the Department of General Services shall prepare for the Governor, the Legislature, and the Department of Veterans Affairs a statewide statistical summary detailing each awarding department's goal achievement and a statewide total of those goals.

~~SEC. 5.—~~

SEC. 4. Section 999.9 of the Military and Veterans Code is amended to read:

999.9. (a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a disabled veteran business enterprise for the purpose of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is

1 investigating the qualifications of a business entity that has
2 requested certification as a disabled veteran business enterprise.

3 (4) Knowingly and with intent to defraud, fraudulently obtain,
4 attempt to obtain, or aid another person in fraudulently obtaining
5 or attempting to obtain, public moneys, contracts, or funds
6 expended under a contract, that are awarded by any state agency,
7 department, officer, or other state governmental agency, to which
8 the person is not entitled under this article.

9 (5) Knowingly and with intent to defraud, fraudulently
10 represent participation of a disabled veteran business enterprise in
11 order to obtain or retain a bid preference or a state contract.

12 (6) Willfully and knowingly make or subscribe to any
13 statement, declaration, or other document that is fraudulent or
14 false as to any material matter, whether or not that falsity or fraud
15 is committed with the knowledge or consent of the person
16 authorized or required to present the declaration, statement, or
17 document.

18 (7) Willfully and knowingly aid or assist in, or procure,
19 counsel, or advise, the preparation or presentation of a declaration,
20 statement, or other document that is fraudulent or false as to any
21 material matter, regardless of whether that falsity or fraud is
22 committed with the knowledge or consent of the person authorized
23 or required to present the declaration, statement, or document.

24 (8) Willfully and knowingly fail to file any declaration or
25 notice with the awarding agency that is required by Section 999.2.

26 (9) Establish, or knowingly aid in the establishment of, or
27 exercise control over, a firm found to have violated any of
28 paragraphs (1) to (8), inclusive.

29 (b) Any person who violates any of the provisions of
30 subdivision (a) shall be guilty of a misdemeanor punishable by
31 imprisonment in the county jail not exceeding six months or by a
32 fine not exceeding one thousand dollars (\$1,000), or by both. In
33 addition, the person shall be liable for a civil penalty of not less
34 than ten thousand dollars (\$10,000) nor more than thirty thousand
35 dollars (\$30,000) for the first violation, and a civil penalty of not
36 less than thirty thousand dollars (\$30,000) nor more than fifty
37 thousand dollars (\$50,000) for each additional or subsequent
38 violation. A defendant who violates any of the provisions of
39 subdivision (a) shall pay all costs and attorney's fees incurred by
40 the plaintiff in a civil action brought pursuant to this section.

(c) (1) The Department of General Services shall suspend any person who violates subdivision (a) from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than three years, and if certified as a disabled veteran business enterprise, the department shall revoke the business' certification for a period of not less than three years. An additional or subsequent violation shall extend the periods of suspension and revocation for a period of not less than five years. The suspension and revocation shall apply to the principals of the business and any subsequent business formed or financed by, or affiliated with, those principals.

(2) The Department of General Services shall prohibit any business or person who fails to satisfy the penalties, costs, and attorney's fees imposed pursuant to subdivision (b) from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Department of General Services. The Department of General Services shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The Department of General Services shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person suspended for violating this section during the period of the person's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person as a subcontractor suspended for violating this section during the period of the person's suspension.

(g) The awarding department shall check the central listing provided by the Department of General Services to verify that the person or contractor to whom the contract is being awarded, or any person being utilized as a subcontractor or supplier by that person or contractor, is not under suspension for violating this section.

~~SEC. 6.—~~

SEC. 5. Section 10115.9 is added to the Public Contract Code, to read:

1 10115.9. A limited liability company may be certified as a
2 disabled veteran business enterprise pursuant to this article if the
3 limited liability company is wholly owned by one or more disabled
4 veterans.

5 ~~SEC. 7.~~

6 *SEC. 6.* No reimbursement is required by this act pursuant to
7 Section 6 XIII B of the California Constitution because the only
8 costs that may be incurred by a local agency or school district will
9 be incurred because this act creates a new crime or infraction,
10 eliminates a crime or infraction, or changes the penalty for a crime
11 or infraction, within the meaning of Section 17556 of the
12 Government Code, or changes the definition of a crime within the
13 meaning of Section 6 of Article XIII B of the California
14 Constitution.

